

Court File No.

Numero du dossier: F/C/88/08

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

DANS LA COUR DU BANC DE LA
REINE DU NOUVEAU BRUNSWICK
DIVISION DE PREMIERE INSTANCE
CIRCONSCRIPTION JUDICIAIRE DE
FREDERICTON

B E T W E E N:

E N T R E:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK,

Plaintiff,

Demanderesse,

-and-

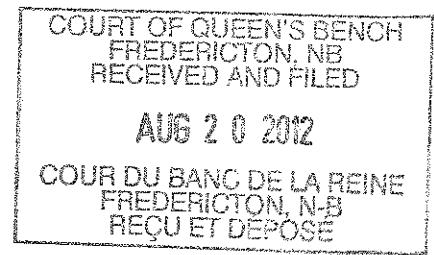
ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO MANUFACTERS' COUNCIL,

Defendants.

Defendeurs.

STATEMENT OF DEFENCE

(Form 27A)



1. The Statement of Claim does not disclose any properly pleaded cause of action against British American Tobacco p.l.c. ("BAT p.l.c").
2. To the extent that the Statement of Claim makes allegations of wrongdoing against BAT p.l.c., whether properly pleaded or otherwise, all such allegations are denied.
3. In the interests of clarity and convenience, BAT p.l.c. adopts in some instances in this Statement of Defence the headings used in the Statement of Claim but it does not thereby admit any facts or allegations contained within such headings. Except where

indicated to the contrary, this Statement of Defence adopts on the same basis the definitions used in the Statement of Claim.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

4. Except as expressly admitted below, and without prejudice to any further response to individual paragraphs of the Statement of Claim as set out below, BAT p.l.c. denies the allegations contained in paragraphs 19, 40-43, 47-119 and 138-143 of the Statement of Claim. Further, BAT p.l.c. denies that the Plaintiff is entitled to the relief sought in paragraphs 1, 2, 3 and 144 of the Statement of Claim and states that the Plaintiff's claim is frivolous and vexatious and should be dismissed with costs.
5. The following paragraphs of the Statement of Claim do not appear to contain allegations relating to BAT p.l.c.: paragraphs 6-15, 17-18, 20-21, 22-35, 38-39, 44-46 and 120-137. As such, BAT p.l.c. does not plead to these paragraphs of the Statement of Claim. BAT p.l.c. reserves its position in the event that the Plaintiff subsequently asserts that these paragraphs of the Statement of Claim do purport to contain allegations relating to BAT p.l.c..
6. With respect to paragraphs 4 and 5 of the Statement of Claim, BAT p.l.c. repeats paragraph 3 above.

B. The Defendants

7. With respect to paragraph 16 of the Statement of Claim, BAT p.l.c. admits that it has a registered office at Globe House, 4 Temple Place, London, England but states that it is a public limited company incorporated pursuant to the laws of England and Wales.
8. BAT p.l.c. was incorporated on July 23, 1997, and did not exist prior to that date. During the period from its incorporation until September 7, 1998, BAT p.l.c. was a dormant company. Consequently, BAT p.l.c. states that it was impossible for it to be a participant in any conduct which took place prior to September 7, 1998 and accordingly denies that it was a participant in any conduct alleged to have taken place prior to that date and which forms the basis of allegations made in the Statement of Claim.
9. BAT p.l.c. is a holding company which has never had any commercial operations of any kind.

10. BAT p.l.c. was formed in connection with a corporate restructuring of B.A.T Industries p.l.c. ("B.A.T Industries"). As part of the restructuring, and pursuant to a "Scheme of Arrangement", BAT p.l.c. was to become the ultimate owner of all of the ordinary shares of B.A.T Industries.
11. The Scheme of Arrangement was presented to the High Court of Justice of England and Wales under Section 425 of the Companies Act of 1985. The Scheme of Arrangement was approved by the High Court on September 3, 1998. Following the High Court's approval, the Scheme of Arrangement was effective as of September 7, 1998.
12. As of September 7, 1998, BAT p.l.c. became the ultimate parent company of B.A.T Industries and its tobacco subsidiaries, including British American Tobacco (Investments) Limited (formerly British American Tobacco Company Limited) ("Investments") ("the September 7 Restructuring").
13. BAT p.l.c. denies paragraph 19 of the Statement of Claim and denies that it is a "manufacturer" pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006 c.T-7.5 (the "Act") or that the Act has any permissible application to it.
14. In addition, BAT p.l.c. denies that it has any predecessors in interest for which it is legally responsible. Without prejudice to the generality of the foregoing denial, BAT p.l.c. states that the September 7 Restructuring did not entail the combination of BAT p.l.c. and B.A.T Industries to form a new corporation, nor did it render BAT p.l.c. a successor to B.A.T Industries or to Investments. Further, neither B.A.T Industries nor Investments is a predecessor of BAT p.l.c.. Further, and in any event, BAT p.l.c., B.A.T Industries and Investments are all entities incorporated pursuant to the law of England and Wales and any question of whether B.A.T Industries and Investments are "predecessors in interest for whom [BAT p.l.c. is] in law responsible" is subject to the law of England and Wales, which does not recognize any doctrine of successor liability as a matter of law. Further, neither by way of the September 7 Restructuring nor at any other point did BAT p.l.c. either expressly or implicitly assume any liabilities either of B.A.T Industries or of Investments. Each company retains its own, separate corporate identity and existence.

II. BAT P.L.C. DID NOT ENGAGE IN THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK

A. Canadian Tobacco Enterprises

15. As to paragraphs 36 and 37 of the Statement of Claim, by virtue of the September 7 Restructuring, BAT p.l.c. acquired, indirectly through another subsidiary, what was then B.A.T Industries' indirectly owned minority interest in Imasco Limited ("Imasco").
16. In August 1999, Imasco and BAT p.l.c. agreed on a "going-private" transaction by which BAT p.l.c. would tender for the approximately 58% of Imasco's publicly traded shares that BAT p.l.c. did not own. An Independent Committee of Imasco's board was established to render advice with respect to the proposed transaction and, on January 28, 2000, Imasco's public shareholders voted to approve the transaction. On February 1, 2000, Imasco changed its name to Imperial Tobacco Canada Limited ("Imperial") and became, and remains, a wholly owned, indirect subsidiary of BAT p.l.c. Subject to the qualification that Imasco is an indirect subsidiary of BAT p.l.c., paragraph 37 of the Statement of Claim is admitted.
17. BAT p.l.c.'s acquisition indirectly of the shares in Imperial was not an amalgamation of the two companies, and accordingly paragraph 36 of the Statement of Claim is denied. BAT p.l.c. and Imperial have always operated as separate and distinct corporate entities.

B. Multinational Tobacco Enterprises

18. BAT p.l.c. is unable to determine what, if any, legal or other significance the plaintiff seeks to ascribe to the term "the BAT Group" as defined in paragraph 40(d) of the Statement of Claim. Without prejudice to this:
 - (a) BAT p.l.c. denies, if it is alleged, that "the BAT Group" is a designation with any legal significance whatsoever. However, and without prejudice to the generality of the foregoing:
 - (i) BAT p.l.c. denies, if it is alleged, that the BAT Group is a legal entity;
 - (ii) BAT p.l.c. denies, if it is alleged, that the BAT Group can have committed any tobacco related wrongs as may be alleged against the BAT Group or any member thereof;

(iii) BAT p.l.c. denies, if it is alleged, that the BAT Group can be liable for any tobacco related wrongs as may be alleged against the BAT Group or any member thereof.

19. BAT p.l.c. repeats paragraph 9 above and states that, since its incorporation on July 23, 1997, BAT p.l.c. has never carried on business in New Brunswick and has not researched, designed, developed, manufactured, advertised, marketed, distributed or promoted cigarettes sold in New Brunswick. Any such activities by another defendant cannot and do not constitute the actions of BAT p.l.c..

20. BAT p.l.c. has never had common policies on smoking and health with other members of the "BAT Group" or with any other companies.

21. BAT p.l.c. is unable to determine what, if any, legal or other significance the Plaintiff seeks to ascribe to the term "Lead Companies" as defined in paragraph 42 of the Statement of Claim. Without prejudice to this, BAT p.l.c. denies that it was such in relation to the "BAT Group", and BAT p.l.c. specifically denies that it has directed or co-ordinated common policies relating to smoking and health within the "BAT Group".

22. By reason of the facts and matters pleaded at paragraphs 18 to 21 above, BAT p.l.c. denies paragraphs 40 to 43 and paragraph 47 of the Statement of Claim.

23. Further, and without prejudice to the generality of the foregoing, as regards any company which is alleged to be a predecessor in interest for which BAT p.l.c. is in law responsible, BAT p.l.c. repeats paragraph 14 above.

III. BAT P.L.C. DID NOT COMMIT ANY TOBACCO-RELATED WRONGS

A. The Defendants' Knowledge

24. BAT p.l.c. has never designed nor manufactured cigarettes, and repeats paragraph 19 above.

25. As such the matters pleaded at paragraphs 48 to 53 of the Statement of Claim are irrelevant to any claim against BAT p.l.c. and are denied.

B. Deceit and Misrepresentation

26. BAT p.l.c. repeats paragraph 19 above and denies that it owed a duty of care to residents of New Brunswick as alleged at paragraph 54 of the Statement of Claim or at

all. In the alternative, if any such duty was owed (which is not admitted but denied), BAT p.l.c. denies that it breached any such duty.

27. BAT p.l.c. denies paragraphs 55 to 59 of the Statement of Claim and states that it has never engaged in the types of conduct alleged in those paragraphs 55 to 59.
28. BAT p.l.c. has not made oral or written statements or representations of any kind as to the risks of smoking or exposure to smoke or as to addiction and/or any other risk or benefit allegedly associated with smoking cigarettes or with cigarette smoke, either in New Brunswick or directed at residents of New Brunswick. In the alternative, if any such statements or representations were made (which is not admitted but denied), BAT p.l.c. denies that such statements were misleading or inaccurate.
29. By reason of the foregoing denials, BAT p.l.c. denies paragraph 60 of the Statement of Claim.
30. Further, BAT p.l.c. states that actions taken or not taken by Imperial in Canada were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or instruction by BAT p.l.c..

C. Failure to Warn

31. BAT p.l.c. repeats paragraph 19 above and denies that there are or were any cigarettes which can be regarded as "their" cigarettes, and accordingly BAT p.l.c. denies and does not plead to the balance of paragraph 61 of the Statement of Claim as it has no application to BAT p.l.c..
32. To the extent that paragraphs 62 to 67 of the Statement of Claim are founded upon conduct referable to "their" cigarettes, BAT p.l.c. repeats paragraph 31, and denies and does not plead to paragraphs 62 to 67 as they have no application to it. Alternatively, to the extent that paragraphs 62 to 67 allege that BAT p.l.c. was subject to and breached a duty of care to residents of New Brunswick in respect of cigarettes other than "their" cigarettes, then the existence and breach of such a duty is denied.
33. By reason of the foregoing denials, BAT p.l.c. denies paragraph 68 of the Statement of Claim.

34. Further, BAT p.l.c. states that actions taken or not taken by Imperial in Canada were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or instruction by BAT p.l.c..

D. Promotion of Cigarettes to Children and Adolescents

35. BAT p.l.c. repeats paragraph 19 above and denies that it owed a duty of care to children and adolescents in New Brunswick as alleged at paragraph 69 of the Statement of Claim or at all. In the alternative, if any such duty was owed (which is not admitted but denied), BAT p.l.c. denies that it breached any such duty.
36. By reason of the foregoing denial, the knowledge alleged at paragraphs 70 to 72 of the Statement of Claim, insofar as it is alleged to be knowledge possessed by BAT p.l.c., is irrelevant to any claim against BAT p.l.c. and is denied.
37. BAT p.l.c. repeats paragraph 35 above and denies paragraphs 74 and 75 of the Statement of Claim.
38. By reason of the foregoing denials, BAT p.l.c. denies paragraph 76 of the Statement of Claim.
39. Further, BAT p.l.c. states that actions taken or not taken by Imperial in Canada were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or instruction by BAT p.l.c..

E. Negligent Design and Manufacture

40. BAT p.l.c. repeats paragraph 19 above and denies that it owed a duty of care to residents of New Brunswick as alleged in paragraph 77 of the Statement of Claim or at all. In the alternative, if any such duty was owed (which is not admitted but denied), BAT p.l.c. denies that it breached any such duty.
41. By reason of the foregoing denial, paragraphs 78 to 82 of the Statement of Claim are denied.
42. By reason of the foregoing denials, BAT p.l.c. denies paragraph 83 of the Statement of Claim.

43. Further, BAT p.l.c. states that actions taken or not taken by Imperial in Canada relating to the design and manufacture of its cigarettes were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or instruction by BAT p.l.c..

F. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations

44. BAT p.l.c. repeats paragraph 19 above and denies that there are or were any cigarettes which can be regarded as "their" cigarettes, and accordingly BAT p.l.c. does not plead to the balance of paragraph 84 of the Statement of Claim as it has no application to BAT p.l.c. and as such is denied.
45. To the extent that paragraphs 85 to 87 of the Statement of Claim are founded upon conduct referable to "their" cigarettes, BAT p.l.c. repeats paragraph 44 and does not plead to paragraphs 85 to 87 as they have no application to it. Alternatively, to the extent that paragraphs 85 to 87 allege that BAT p.l.c. was subject to and breached any duties to residents of New Brunswick in respect of cigarettes other than "their" cigarettes, then the existence and breach of such duties is denied.
46. By reason of the foregoing denials, BAT p.l.c. denies paragraph 88 of the Statement of Claim.
47. Further, BAT p.l.c. states that actions taken or not taken by Imperial in Canada were undertaken by Imperial pursuant to the business, legal and scientific judgments of Imperial's executives and not as a proximate result of any direction or instruction by BAT p.l.c..

G. No market share

48. By reason of the facts and matters pleaded above, in particular at paragraphs 9 and 19, BAT p.l.c. has never possessed any share of the market for cigarettes in New Brunswick whether as defined by the Act or at all. Accordingly, BAT p.l.c. can have no liability quantifiable by reference to its market share and to the extent that liability under the Act is determined by reference thereto then BAT p.l.c. can have no liability at all.

IV. BAT P.L.C DID NOT ENGAGE IN ANY CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN

49. In this section of its Statement of Defence, BAT p.l.c. pleads as fully as it is currently able to the allegations in paragraphs 89-119 and 138-143 of the Statement of Claim. Pending proper particularisation of the Statement of Claim, many of the allegations can be pled to in only the most general terms. BAT p.l.c. reserves the right to supplement this Statement of Defence once the Statement of Claim is properly particularised.
50. If, which is denied, BAT p.l.c. has any liability to the plaintiff by reason of the matters pleaded at Section IV of the Statement of Claim then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom BAT p.l.c. is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, BAT p.l.c. claims the benefit of all and any defences of all and any defendants with whom BAT p.l.c. is alleged to be jointly and severally liable, for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, BAT p.l.c. is alleged to be jointly and severally liable.
51. Without prejudice to the foregoing, to the extent that the conduct alleged in paragraphs 89-119 and 138-143 of the Statement of Claim occurred prior to September 7, 1998, BAT p.l.c. repeats paragraph 8 above.
52. By reason of the failure of the Plaintiff to plead any conduct undertaken by BAT p.l.c. since September 7, 1998 within the scope of the allegations pleaded at paragraphs 89 - 119 and 138 - 143 of the Statement of Claim then such allegations are irrelevant to any claim against BAT p.l.c. and BAT p.l.c. denies these allegations.
53. If any conduct is alleged to have taken place since September 7, 1998 then, in respect of paragraphs 89-119 and 138-143 of the Statement of Claim, BAT p.l.c. denies that it:
 - (a) Conspired, or joined any ongoing conspiracy, with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
 - (b) acted in concert or with common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

- (c) was involved either as principal or as agent for any other defendant or any other person or entity with respect to the commission of any tobacco related wrong; or
- (d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the Act or otherwise pursuant to section 4 of the Act, or at all.

54. Further, BAT p.l.c. denies that it directed or controlled the activities of, or conspired or acted in concert or with common design with the defendant Imperial, as alleged or at all. At all material times, to the extent that BAT p.l.c. held shares in Imperial, BAT p.l.c. and Imperial observed all corporate separateness formalities. BAT p.l.c. did not dominate or exert functional or legal control or undue influence over Imperial.

V. RELIEF

55. Pending proper particularisation of the Statement of Claim, in this section of its Statement of Defence BAT p.l.c. pleads as best it can to the claim for relief set out at paragraph 144 of the Statement of Claim.

56. If BAT p.l.c. breached any duty or obligation in New Brunswick, as alleged or at all (which is denied), then it is denied that such breach caused or contributed to any tobacco related disease or risk of tobacco related disease or to the cost of health care benefits described in paragraph 1 of the Statement of Claim, as alleged or at all.

57. Further or in the alternative, if the Plaintiff has incurred the cost of health care benefits, whether resulting from tobacco related disease or the risk of tobacco related disease (all of which is denied), that cost was incurred as a result of:

- (a) requirements in the statutes and regulations that were voluntarily enacted by the Plaintiff and which provide for health care in New Brunswick, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in subparagraphs 1(a) to (d) of the definition of health care benefits in the Act; and/or
- (b) disease or risk of disease in individual insured persons that is unrelated to smoking cigarettes or to exposure to cigarette smoke, and in this regard BAT p.l.c. puts the Plaintiff to the strict proof, in relation to each disease, of the cost of health care benefits actually caused or contributed to by smoking cigarettes or by exposure to cigarette smoke.

58. Further or in the alternative, if the Plaintiff has incurred the cost of health care benefits as alleged (which is denied), that cost has not been and will not be increased by the consumption of cigarettes or exposure to cigarette smoke by insured persons beyond what such cost would have been in the absence of any alleged breach of duty (which breach is denied).
59. Further or in the alternative, if the Plaintiff has incurred the cost of health care benefits as alleged (which is denied), that cost is met or exceeded by monies received from the federal government by means of transfer payments, conditional grants and share-cost programmes so that no cost is ultimately incurred by the Plaintiff.
60. In the further alternative, if the Plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied), that cost is met or exceeded by the tax revenue the Plaintiff has received from the sale of cigarettes in New Brunswick.
61. BAT p.l.c. pleads and relies upon the limitation of actions statute (or statutes) applicable on a proper choice of law analysis to the tobacco related wrongs alleged.
62. Further, BAT p.l.c. repeats paragraph 50 above and states, for the avoidance of any possible doubt, that such paragraph is applicable to the Plaintiff's claim for relief.
63. BAT p.l.c. requests that the claim against it be dismissed with costs.
64. BAT p.l.c. intends to proceed in the English language.

DATED at Moncton this 20th day of August, 2012.

Edwin G. Ehrhardt

Edwin G. Ehrhardt
Solicitor for the Defendant,
British American Tobacco P.L.C.

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BETWEEN:

ENTRE:

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Plaintiff,

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- and -

- et -

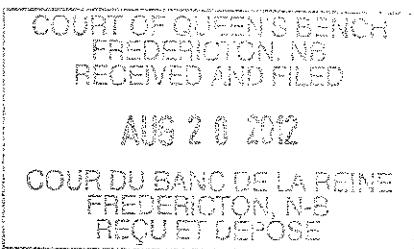
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TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO
MANUFACTURERS' COUNCIL,

Defendants.

Defendeurs.

**STATEMENT OF DEFENCE OF CARRERAS ROTHMANS LIMITED
(Form 27A)**

1. Except as expressly admitted below, Carreras Rothmans Limited (hereinafter "CRL" or the "defendant CRL") denies the allegations contained in paragraphs 19, 40 to 44 and 48 to 123 of the Statement of Claim, and further denies that the plaintiff is entitled to the relief sought in paragraphs 1, 2, 3 and 144 of the Statement of Claim.
2. The defendant CRL has no knowledge of the facts alleged in paragraphs 6, 7, 9-18, 20-22, 23-39, 45-47 and 124-143 of the Statement of Claim and puts the plaintiff to the strict proof thereof.
3. With respect to paragraphs 4 and 5 of the Statement of Claim, the defendant CRL admits only that the Statement of Claim states that the definitions referred to are for purposes of the Statement of Claim and not otherwise.



I. CARRERAS ROTHMANS LIMITED

4. The defendant CRL was incorporated in 1905 as John Sinclair, Limited. In September of 1972, by way of a corporate name change, it became known as Carreras Rothmans Limited.
5. With respect to paragraph 8 of the Statement of Claim, the defendant CRL states that it is incorporated pursuant to the laws of England and Wales and states that it has a registered office at Globe House, 1 Water Street, London, England.
6. Since March of 1984 the defendant CRL has been dormant in accordance with the meaning ascribed to that term in the *Companies Act* (U.K.), as amended.
7. The Statement of Claim as supplemented by the plaintiff's Statement of Particulars indicates the plaintiff's claim is directed at a corporate entity (the "Other Rothmans Entity") that is not the defendant CRL. CRL says, and the fact is, that:
 - a) it was not formed in 1958 as a result of an amalgamation between Rothmans of Pall Mall Limited and Carreras Limited;
 - b) it does not have predecessors in interest that include Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada Limited and Carreras Limited; and
 - c) it does not have, nor has it ever had, affiliates or subsidiaries in Canada.

II. ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

GENERAL DEFENCES

A. No cause of action

8. CRL says the plaintiff's allegations as pleaded are directed at the Other Rothmans Entity and they disclose no cause of action against the defendant CRL.
9. CRL says further that:
 - a) the plaintiff's allegations relating to acts or omissions of alleged predecessors in interest of the Other Rothmans Entity, including Rothmans of Pall Mall

Limited, Rothmans of Pall Mall Canada Limited and Carreras Limited, disclose no cause of action against the defendant CRL; and

- b) the plaintiff's allegations relating to acts or omissions of alleged affiliates and subsidiaries of the Other Rothmans Entity disclose no cause of action against the defendant CRL.

B. No duty nor breach of duty

- 10. CRL says, and the fact is, that it has never conducted business in New Brunswick and that it has never developed, designed, manufactured, advertised, marketed, distributed or promoted cigarettes sold in New Brunswick.
- 11. CRL denies that it owes or has ever owed any duty to the plaintiff.
- 12. CRL specifically denies that it owes or has ever owed any duties to the residents of New Brunswick referred to in the Statement of Claim, or at all.
- 13. At all material times, it has been within the common knowledge of such New Brunswick residents that along with the pleasures of smoking, come real and serious health risks and that, for many people, smoking is difficult to quit.
- 14. Further, governments in Canada, both federal and provincial, have assumed responsibility for the regulation of cigarettes, including their sale and the provision of product information to consumers. The consumption of cigarettes in New Brunswick which underlies the plaintiff's claim resulted from the sale of cigarettes which was lawful, which was carried out in the manner required by the applicable regulatory framework of the day, and from which the plaintiff, and other levels of government, knowingly benefited by the receipt of substantial tax revenues in excess of the cost of health care benefits alleged to have been incurred by the plaintiff.
- 15. In answer to the entire Statement of Claim, CRL says:
 - a) CRL denies that it breached any duty to the plaintiff or to insured persons in New Brunswick as alleged or at all;

- b) CRL denies that persons have started or continued to smoke, or suffered any injury, as a consequence of any alleged breach of duty;
- c) at all material times, the manufacture, sale, advertising and promotion of cigarettes in New Brunswick and throughout Canada has been supervised, regulated and controlled by the plaintiff and the Government of Canada; and
- d) the manufacture, sale, advertising and promotion of cigarettes in New Brunswick and throughout Canada at all material times complied with the standards, regulations and directives imposed by those governments, and complied with their recommendations, suggestions and advice and thereby discharged any duties applicable to dealings with smokers or potential smokers.

C. No causation nor loss

- 16. In answer to the entire Statement of Claim, CRL says that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons in New Brunswick resulting from tobacco related disease or the risk of tobacco related disease have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular, CRL says that:
 - a) if CRL breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke. CRL says further that:
 - i. the decision to start, continue, or quit smoking by any individual insured person is an individual decision taken by that insured person for reasons specific to that person;
 - ii. while CRL accepts that smoking is for many people difficult to quit and that it can be termed an “addiction” or dependency, CRL says that decisions by insured persons to continue smoking are voluntary choices, and denies that an insured person who smokes is deprived, by

reason of the effects of nicotine, of the ability to exercise a free choice to decide to continue or quit smoking;

- iii. while CRL accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, CRL says that at all material times insured persons have been aware of, or had information available to them regarding, the serious health risks associated with smoking and the fact that smoking can be difficult to quit. CRL denies that insured persons relied on positions adopted by CRL as to the health risks associated with smoking and, alternatively, if they did so rely then it is denied that such reliance caused them to start or to continue to smoke or that such reliance was reasonable.
- b) if CRL breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to:
 - i. any tobacco related disease in any insured person; or
 - ii. any increased risk of tobacco related disease in any insured person.
- c) if CRL breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to the cost of health care benefits claimed by the plaintiff, or at all;
- d) if the plaintiff has incurred or will incur any cost of health care benefits, which is denied, that cost was caused or will be caused by one or more of the following:
 - i. requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in New Brunswick, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in subparagraphs 1(a) to (d) of the definition of health care benefits in the *Tobacco Damages and Health Care Costs Recovery Act*, S.N.B. 2006 c.T-7.5 (the "Act");

- ii. the conduct and acts or omissions of the plaintiff as further particularized herein;
- iii. the conduct and acts or omissions of individual insured persons as further particularized herein; and
- iv. disease or risk of disease in individual insured persons unrelated to smoking cigarettes or exposure to cigarette smoke.

e) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

- i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and are the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;
- ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;
- iii. that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of cigarettes in New Brunswick alleged to have been caused by the tobacco related wrongs alleged; and
- iv. that cost is not influenced by the tobacco related wrongs alleged.

D. Limitations

17. CRL pleads and relies upon the limitations of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged.

III. RESPONSE TO SPECIFIC CLAIMS OF THE PLAINTIFF

18. In the interests of convenience and clarity, in this section of this Statement of Defence CRL adopts headings used in the Statement of Claim in order to respond to paragraphs

set out beneath each such heading. The adoption of the headings is not an admission of any facts or allegations contained within such headings. Except where indicated to the contrary, the remainder of this Statement of Defence adopts on the same basis the definitions used in the Statement of Claim.

19. In specific answer to paragraph 19 of the Statement of Claim, CRL denies that it is a "manufacturer" as alleged. CRL further denies it has any predecessors in interest for whom it is legally responsible.

THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK
(Paragraphs 23 to 47 of the Statement of Claim)

A. Canadian Tobacco Enterprises
(paragraphs 23 to 39 of the Statement of Claim)

20. CRL is not and has never been a Canadian Tobacco Enterprise.

B. Multinational Tobacco Enterprises
(paragraphs 40 to 47 of the Statement of Claim)

21. In specific answer to paragraph 40(a) of the Statement of Claim, CRL denies that "the Rothmans Group" is a designation with any legal significance whatsoever.
22. In answer to the whole of the Statement of Claim and paragraph 41 specifically, CRL says, and the fact is, it does not carry on, and has never carried on, business in New Brunswick and has never designed, manufactured, advertised, marketed, distributed, promoted or sold cigarettes in New Brunswick.
23. CRL denies that it directed or controlled smoking and health policies of other members of the Rothmans Group or of any other companies. Other members of the Rothmans Group developed their own smoking and health policies pursuant to their own respective business, legal and scientific judgments and not as a proximate cause of any direction or instruction by CRL.
24. In specific response to paragraph 42 of the Statement of Claim and the whole of the Statement of Claim, CRL denies that
 - a) it is or was a "Lead Company" as alleged by the plaintiff or at all; and

- b) it has directed or co-ordinated within the Rothmans Group common policies relating to smoking and health.

25. CRL makes no admissions as to the membership of the Rothmans Group.

26. By reason of the facts and matters pleaded at paragraphs 23-27 above, CRL denies paragraphs 40-44 of the Statement of Claim.

TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS
(Paragraphs 48 to 88 of the Statement of Claim)

27. CRL has never conducted business in New Brunswick and has never designed, manufactured, advertised, marketed, distributed or promoted cigarettes sold in New Brunswick. Any such activities by another defendant or company cannot and does not constitute the actions of CRL.

28. CRL denies that it owes, or has ever owed, a duty of care to residents of New Brunswick as alleged in paragraphs 54, 61, 69, 77 and 84 of the Statement of Claim or at all.

29. Further, and in the alternative, to the extent that CRL owes or owed a duty of care to any resident of New Brunswick (which is not admitted but specifically denied), CRL complied with any such duty, whether based in common law, equity or statute.

30. Further, and in the alternative, if CRL breached any duty of care to residents of New Brunswick (which is not admitted but specifically denied), CRL says no such breach resulted in persons in New Brunswick starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

A. The Defendants' Knowledge
(paragraphs 48 to 53 of the Statement of Claim)

31. CRL repeats paragraph 27 and says the matters pleaded in paragraphs 48 to 53 of the Statement of Claim are irrelevant to any claim against CRL and are denied.

B. Deceit and Misrepresentation

(paragraphs 54 to 60 of the Statement of Claim)

32. CRL repeats paragraphs 27 to 30 and denies the allegations in paragraphs 54 to 60 of the Statement of Claim.
33. In further answer to paragraphs 54 to 60 of the Statement of Claim, CRL says it has not made oral or written statements or representations of any kind as to the risks of smoking or exposure to smoke or as to addiction and/or any other risk or benefit allegedly associated with smoking cigarettes or with cigarette smoke, either in New Brunswick or directed at residents of New Brunswick. Further, any statements or representations by CRL on these issues made outside of New Brunswick were based on CRL's reasonably and genuinely held beliefs given the scientific state of the art.
34. CRL says further that at no time did it make any representations that were false or with wilful blindness, recklessness, or negligence as to their truth or falsity.
35. Further, CRL says that actions taken or not taken by other members of the Rothmans Group in Canada were undertaken by them pursuant to their own respective business, legal and scientific judgments and not as a proximate result of any direction or instruction by CRL.

C. Failure to Warn

(paragraphs 61 to 68 of the Statement of Claim)

36. CRL repeats paragraphs 27 to 30 and denies the allegations in paragraphs 61 to 68 of the Statement of Claim.
37. CRL says further that no cigarettes have ever been sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly CRL says paragraphs 61 to 68 of the Statement of Claim have no application to CRL.
38. Further, CRL says that actions taken or not taken by other members of the Rothmans Group in Canada were undertaken by them pursuant to their own respective business, legal and scientific judgments and not as a proximate result of any direction or instruction by CRL.

D. Promotion of Cigarettes to Children and Adolescents
(paragraphs 69 to 76 of the Statement of Claim)

39. CRL repeats paragraphs 27 to 30 and denies the allegations in paragraphs 69 to 76 of the Statement of Claim.
40. Further, CRL says that actions taken or not taken by other members of the Rothmans Group in Canada were undertaken by them pursuant to their own respective business, legal and scientific judgments and not as a proximate result of any direction or instruction by CRL.

E. Negligent Design and Manufacture
(paragraphs 77 to 83 of the Statement of Claim)

41. CRL repeats paragraphs 27 to 30 and denies the allegations in paragraphs 77 to 83 of the Statement of Claim.
42. CRL says further that it did not direct or control any of the efforts of the other members of the Rothmans Group relating to the design or manufacture of cigarettes they sold in New Brunswick. The other members of the Rothmans Group each undertook their own research and development with respect to specific products they each sold in New Brunswick, and determined the appropriate product development and marketing for products they each sold in New Brunswick, based on their specific knowledge and appreciation of federal and provincial business, legal and consumer requirements and circumstances.

F. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations
(paragraphs 84 to 88 of the Statement of Claim)

43. CRL repeats paragraphs 27 to 30 and denies the allegations in paragraph 84 to 88 of the Statement of Claim.
44. CRL says further that no cigarettes have ever been sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly CRL denies that paragraphs 84 to 88 of the Statement of Claim have any application to CRL.

45. Further, CRL says that actions taken or not taken by other members of the Rothmans Group in Canada were undertaken by them pursuant to their own respective business, legal and scientific judgments and not as a proximate result of any direction or instruction by CRL.

G. No market share

46. By reason of the facts and matters pleaded above, in particular at paragraph 27, CRL has never possessed any share of the market for cigarettes in New Brunswick whether as defined by the *Act* or at all. Accordingly, CRL can have no liability quantifiable by reference to its market share and to the extent that liability under the Act is determined by reference thereto then CRL can have no liability at all.

CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN
(paragraphs 89 to 143 of the Statement of Claim)

47. In the following section of this Defence, CRL pleads as fully as it is currently able to the allegations contained at paragraphs 89 to 123 of the Statement of Claim. Pending proper particularization of the Statement of Claim, many of the allegations can be pled to in only the most general terms. CRL reserves the right to supplement this Defence once the Statement of Claim is properly particularized.

48. CRL denies the allegations in paragraphs 89 to 123 of the Statement of Claim.

49. In specific answer to paragraphs 89 to 123, CRL denies that it:

- a) conspired with any of the named defendants within the Rothmans Group or with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
- b) acted in concert or with common design with any of the named defendants within the Rothmans Group or with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or

- c) was involved either as principal or as agent for any of the named defendants within the Rothmans Group or for any other defendant with respect to the commission of any tobacco related wrong; or
- d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the Act or otherwise pursuant to section 4 of the Act, or at all.

50. CRL further denies that it directed, controlled or dictated the activities or policies of or positions taken by any of the named members of the Rothmans Group, whether together with or separately from any senior personnel of the Philip Morris Group, as alleged or at all.

51. CRL denies the existence of any conspiracy, concert of action or common design. In the alternative, the plaintiff has no claim in respect thereof because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in New Brunswick in furtherance thereof that the plaintiff alleges are unlawful.

52. CRL pleads the doctrines of *ex turpi causa non oritur actio* and *in pari delicto potior est condition defendantis*.

53. In the alternative, if CRL has any liability to the plaintiff by reason of the matters pleaded at Section IV of the Statement of Claim (which is denied) then CRL claims the benefit of all and any defences of all and any defendants with whom CRL is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant, and hence, CRL is alleged to be jointly and severally liable.

RELIEF

(*paragraph 144 of the Statement of Claim*)

54. CRL denies the plaintiff has incurred the cost of health care benefits as alleged.

55. In further answer to paragraph 144 of the Statement of Claim, CRL repeats paragraphs 10 to 17 herein.

IV. THE PLAINTIFF'S CONDUCT AND KNOWLEDGE

A. General

56. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in New Brunswick. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), CRL states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.
57. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state-of-the-art of the day, regarding the health risks associated with smoking cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:
 - a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in New Brunswick and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;
 - b) has sought to benefit financially from the sale of cigarettes in New Brunswick, and has so benefitted, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of cigarettes and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking cigarettes and exposure to cigarette smoke;
 - c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time; and

- d) has voluntarily undertaken the obligations of paying for the costs of health care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke and has set its taxation and health care policies accordingly.

58. Further, CRL states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of CRL. CRL pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.N.B. 2011, c.131 and the *Tortfeasors Act*, R.S.N.B. 2011, c.231.

59. Further, CRL states that the plaintiff is barred from recovering any damages or costs it has suffered (the existence of which is denied), as any damages or costs flowed from its own wrongful conduct.

60. Further, CRL states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to CRL, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against CRL. CRL also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged.

61. Further, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, the plaintiff has failed to mitigate those costs.

V. CONDUCT OF INDIVIDUAL INSUREDS

A. General

62. If the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused by, and the plaintiff's claim to recover the cost is subject to complete defences by reason of, the conduct of individual persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

63. At all material times insured persons who smoke or have smoked cigarettes were aware, or should have been aware, of risks associated with smoking.
64. During all material times, insured persons became aware, or should have become aware, of risks associated with smoking by various means, including, without limitation, one or more of the following:
 - a) discussions and writing in all forms of media, including newspapers, magazines, journals, television, movies and radio;
 - b) education programmes, including courses, seminars and lectures and educational literature and other media;
 - c) oral and written warnings from physicians, other health practitioners, and public health authorities;
 - d) oral and written warnings from family members, friends and other acquaintances;
 - e) common general understandings and historical beliefs;
 - f) warnings on the packaging of cigarettes, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and
 - g) mandatory displays, signs and other warnings required by provincial legislation in premises where sale of cigarettes take place.
65. By reason of the foregoing, CRL says that insured persons who smoke or have smoked cigarettes were aware, or should have been aware, of associated risks.
66. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and voluntarily consented to accept such risks.
67. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with

awareness of the associated risks. CRL had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.

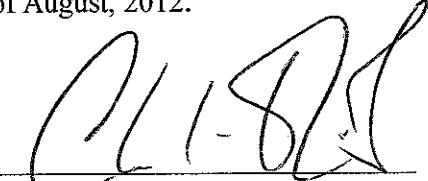
68. CRL denies that any insured persons began, continued or were unable to cease smoking by reason of any of the alleged breaches of duty of CRL, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person.
69. Further, CRL says that at all material times individual insured persons were aware, or should have been aware of, of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence and continue smoking.
70. Further, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of CRL. CRL pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.N.B. 2011, C.131 and the *Tortfeasors Act*, R.S.N.B. 2011, c.23, as amended.
71. Further, CRL says that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to CRL, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against CRL.
72. Further, CRL pleads and relies upon the limitations of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest.
73. Further, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, individual insured persons have failed to mitigate that cost.

VI. RELIEF

74. CRL requests that the claim against it be dismissed with costs.

75. CRL intends to proceed in the English language.

DATED at Fredericton, New Brunswick, this 20th day of August, 2012.



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Carreras Rothmans Limited
Per: Christopher M. Rusnak

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Court File No.

Numero du dossier: F/C/88/08

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

DANS LA COUR DU BANC DE LA
REINE DU NOUVEAU BRUNSWICK
DIVISION DE PREMIERE INSTANCE
CIRCONSCRIPTION JUDICIAIRE DE
FREDERICTON

B E T W E E N :

E N T R E :

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK,

Plaintiff,

Demanderesse,

- and -

- et -

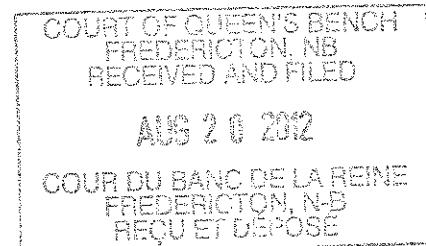
ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS
ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC.,
PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J.
REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO
INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH
AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN
TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO
MANUFACTURERS' COUNCIL,

Defendants.

Defendeurs.

STATEMENT OF DEFENCE OF B.A.T INDUSTRIES P.L.C.
(Form 27A)

1. Except as expressly admitted below, B.A.T Industries p.l.c. (hereinafter "Industries") denies the allegations contained in paragraphs 19, 40-43, 47-119 and 138-143 of the Statement of Claim, and further denies that the plaintiff is entitled to the relief sought in paragraphs 1, 2, 3 and 144 of the Statement of Claim.
2. Industries has no knowledge of the facts alleged in paragraphs 6-17, 20-39, 44-46 and 120-137 of the Statement of Claim and puts the plaintiff to the strict proof thereof.
3. With respect to paragraphs 4 and 5 of the Statement of Claim, Industries admits only that the Statement of Claim states that the definitions referred to are for purposes of the Statement of Claim and not otherwise.



4. With respect to paragraph 18 of the Statement of Claim, Industries admits that it has a registered office at Globe House, 4 Temple Place, London, England but states that it is a public limited company incorporated pursuant to the laws of England and Wales.

I. B.A.T INDUSTRIES P.L.C.

5. Industries was incorporated on September 3, 1928 as Tobacco Securities Trust Company Limited. Its name was changed by resolution on July 23, 1976 to B.A.T Industries Limited, and it was re-registered as a public limited company on July 8, 1981 as B.A.T Industries p.l.c..
6. In specific response to the whole of the Statement of Claim as supplemented by the plaintiff's Statement of Particulars (particularly the preamble and paragraph 3), Industries says, and the fact is, that British American Tobacco (Investments) Limited is not a predecessor in interest to Industries.
7. Throughout its history Industries has functioned as a holding company. Its office has always been located in London, England.

II. ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

GENERAL DEFENCES

A. No duty nor breach of duty

8. Industries says, and the fact is, that it has never conducted business in New Brunswick and that it has never been involved in the research, development, design, manufacture, advertisement, marketing, distribution or promotion of cigarettes sold in New Brunswick, Canada, or anywhere else as this was not its function as a holding company.
9. Industries denies that it owes or has ever owed any duty to the plaintiff.
10. Industries specifically denies that it owes or has ever owed any duties to the residents of New Brunswick referred to in the Statement of Claim, or at all.

11. At all material times, it has been within the common knowledge of such New Brunswick residents that along with the pleasures of smoking, come real and serious health risks and that, for many people, smoking is difficult to quit.
12. Further, governments in Canada, both federal and provincial, have assumed responsibility for the regulation of cigarettes, including their sale and the provision of product information to consumers. The consumption of cigarettes in New Brunswick which underlies the plaintiff's claim resulted from the sale of cigarettes which was lawful, which was carried out in the manner required by the applicable regulatory framework of the day, and from which the plaintiff, and other levels of government, knowingly benefited by the receipt of substantial tax revenues in excess of the cost of health care benefits alleged to have been incurred by the plaintiff.
13. In further answer to the entire Statement of Claim, Industries says:
 - a) Industries denies that it breached any duty to the plaintiff or to insured persons in New Brunswick as alleged or at all;
 - b) at all material times, the manufacture, sale, advertising and promotion of cigarettes in New Brunswick and throughout Canada has been supervised, regulated and controlled by the plaintiff and the Government of Canada; and
 - c) the manufacture, sale, advertising and promotion of cigarettes in New Brunswick and throughout Canada at all material times complied with the standards, regulations and directives imposed by those governments, and complied with their recommendations, suggestions and advice and thereby discharged any duties applicable to dealings with smokers or potential smokers.

B. No causation nor loss

14. In answer to the entire Statement of Claim, Industries says that the costs that have been incurred or will be incurred by the plaintiff in respect of the health care benefits for insured persons in New Brunswick resulting from tobacco related disease or the risk of tobacco related disease have not been and will not be caused or contributed to

by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular, Industries says that:

- a) if Industries breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke. Industries says further that:
 - i. the decision to start, continue or quit smoking by any individual insured person is an individual decision taken by that insured person for reasons specific to that person;
 - ii. while Industries accepts that smoking is for many people difficult to quit and that it can be termed an “addiction” or dependency, Industries says that decisions by insured persons to continue smoking are voluntary choices, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to decide to continue or to quit smoking;
 - iii. while Industries accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Industries says that at all material times insured persons have been aware of, or had information available to them regarding, the serious health risks associated with smoking and the fact that smoking can be difficult to quit. Industries denies that insured persons relied on positions adopted by Industries as to the health risks associated with smoking and, alternatively, if they did so rely then it is denied that such reliance caused or contributed to their decision to start or to continue to smoke or that such reliance was reasonable.
- b) if Industries breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to:
 - i. any tobacco related disease in any insured person; or

- ii. any increased risk of tobacco related disease in any insured person.
- c) if Industries breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits claimed by the plaintiff, or at all;
- d) if the plaintiff has incurred or will incur any cost of health care benefits, which is denied, then that cost was caused or will be caused by one or more of the following:
 - i. requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in New Brunswick, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in subparagraphs 1(a) to (d) of the definition of health care benefits in the *Tobacco Damages and Health Care Costs Recovery Act*, S.N.B. 2006 c.T-7.5 (the "Act");
 - ii. the conduct and acts or omissions of the plaintiff as further particularized herein;
 - iii. the conduct and acts or omissions of individual insured persons as further particularized herein; and
 - iv. disease or risk of disease in individual insured persons unrelated to smoking cigarettes or exposure to cigarette smoke.
- e) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:
 - i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;

- ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;
- iii. that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of cigarettes in New Brunswick alleged to have been caused by the tobacco related wrongs alleged; and
- iv. that cost is not influenced by the tobacco related wrongs alleged.

C. Limitations

15. Industries pleads and relies upon the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged.

III. RESPONSE TO SPECIFIC CLAIMS OF THE PLAINTIFF

16. In the interests of convenience and clarity, in this section of this Statement of Defence Industries adopts headings used in the Statement of Claim in order to respond to paragraphs set out beneath each such heading. The adoption of the headings is not an admission of any facts or allegations contained within such headings. Except where indicated to the contrary, the remainder of this Statement of Defence adopts on the same basis the definitions used in the Statement of Claim.

17. In specific answer to paragraph 19 of the Statement of Claim, Industries denies that it is a "manufacturer" as alleged. Industries further denies it has any predecessors in interest for whom it is legally responsible.

THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK
(Paragraphs 23 to 47 of the Statement of Claim)

A. Canadian Tobacco Enterprises
(paragraphs 23 to 39 of the Statement of Claim)

18. Industries is not and has never been a Canadian Tobacco Enterprise.

B. Multinational Tobacco Enterprises
(paragraphs 40 to 47 of the Statement of Claim)

19. In specific answer to paragraph 40(d) of the Statement of Claim, Industries denies that "the BAT Group" is a designation with any legal significance whatsoever.
20. In answer to the whole of the Statement of Claim and paragraph 41 specifically, Industries says, and the fact is, that: it has only ever functioned as a holding company; it has never conducted business in New Brunswick; and it has never been involved in the research, development, design, manufacture, advertising, marketing, distribution or promotion of cigarettes sold in New Brunswick, Canada, or anywhere else in the world as this was not its function as a holding company.
21. Industries denies the allegation that it directed or controlled smoking and health policies of affiliated companies, including the defendant Imperial Tobacco Canada Limited ("ITCAN"), and states that ITCAN and other companies identified in paragraph 47 developed their own smoking and health policies pursuant to the business, legal and scientific judgments of their respective executives and not as a proximate result of any direction or instruction by executives or directors at Industries.
22. Industries is unable to determine what, if any, legal or other significance the plaintiff seeks to ascribe to the term "Lead Companies" as defined in paragraph 42 of the Statement of Claim. Without prejudice to this, Industries denies that it was such in relation to the companies identified at paragraph 47 of the Statement of Claim, and Industries specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS
(Paragraphs 48 to 88 of the Statement of Claim)

23. Industries has never conducted business in New Brunswick and has never been involved in the research, development, design, manufacture, advertising, marketing, distribution or promotion of cigarettes sold in New Brunswick, or anywhere else in the world. Any such activities by another defendant cannot and do not constitute the actions of Industries.

24. Industries denies that it owes, or has ever owed, a duty of care to residents of New Brunswick as alleged in paragraphs 54, 61, 69, 77 and 84 of the Statement of Claim or at all.
25. Further, and in the alternative, to the extent that Industries owes or owed a duty of care to any resident of New Brunswick (which is not admitted but specifically denied), Industries complied with any such duty, whether based in common law, equity or statute.
26. Further, and in the alternative, if Industries breached any duty of care to residents of New Brunswick (which is not admitted but specifically denied), Industries says no such breach resulted in persons in New Brunswick starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

A. The Defendants' Knowledge
(paragraphs 48 to 53 of the Statement of Claim)

27. Industries repeats paragraph 23 and says the matters pleaded in paragraphs 48 to 53 of the Statement of Claim are irrelevant to any claim against Industries and are denied.

B. Deceit and Misrepresentation
(paragraphs 54 to 60 of the Statement of Claim)

28. Industries repeats paragraphs 23 to 26 and denies the allegations in paragraphs 54 to 60 of the Statement of Claim.
29. In further answer to paragraphs 54 to 60 of the Statement of Claim, Industries says it has not made oral or written statements or representations of any kind as to the risks of smoking or exposure to smoke or as to addiction and/or any other risk or benefit allegedly associated with smoking cigarettes or with cigarette smoke, either in New Brunswick or directed at residents of New Brunswick. Further, any statements or representations by Industries on these issues made outside of New Brunswick were based on Industries' reasonably and genuinely held beliefs given the scientific state of the art.

30. Industries says further that at no time did it make any representations that were false or with wilful blindness, recklessness, or negligence as to their truth or falsity.
31. Further, Industries says that actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by Industries.

C. Failure to Warn

(paragraphs 61 to 68 of the Statement of Claim)

32. Industries repeats paragraphs 23 to 26 and denies the allegations in paragraphs 61 to 68 of the Statement of Claim.
33. Industries says further that no cigarettes have ever been sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly Industries says paragraphs 61 to 68 of the Statement of Claim have no application to Industries.
34. Further, Industries says that actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by Industries.

D. Promotion of Cigarettes to Children and Adolescents

(paragraphs 69 to 76 of the Statement of Claim)

35. Industries repeats paragraphs 23 to 26 and denies the allegations in paragraphs 69 to 76 of the Statement of Claim.
36. Further, Industries says that actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by Industries.

E. Negligent Design and Manufacture
(paragraphs 77 to 83 of the Statement of Claim)

37. Industries repeats paragraphs 23 to 26 and denies the allegations in paragraphs 77 to 83 of the Statement of Claim.
38. Industries says further that it did not direct or control any of ITCAN's efforts relating to the design or manufacture of cigarettes ITCAN sold in New Brunswick, or anywhere else. ITCAN undertook its own research and development with respect to specific products it sold in New Brunswick, and determined the appropriate product development and marketing for products it sold in New Brunswick, based on ITCAN's specific knowledge and appreciation of federal and provincial business, legal and consumer requirements and circumstances.

F. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations
(paragraphs 84 to 88 of the Statement of Claim)

39. Industries repeats paragraphs 23 to 26 and denies the allegations in paragraph 84 to 88 of the Statement of Claim.
40. Industries says further that no cigarettes have ever been sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly Industries denies that paragraphs 84 to 88 of the Statement of Claim have any application to Industries.
41. Further, Industries says that actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by Industries.

G. No market share

42. By reason of the facts and matters pleaded above, in particular at paragraph 23, Industries has never possessed any share of the market for cigarettes in New Brunswick whether as defined by the *Act* or at all. Accordingly, Industries can have no liability quantifiable by reference to its market share and to the extent that liability

under the Act is determined by reference thereto then Industries can have no liability at all.

CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN
(paragraphs 89 to 143 of the Statement of Claim)

43. In the following section of this Defence, Industries pleads as fully as it is currently able to the allegations contained at paragraphs 89-119 and 138-143 of the Statement of Claim. Pending proper particularization of the Statement of Claim, many of the allegations can be pled to in only the most general terms. Industries reserves the right to supplement this Defence once the Statement of Claim is properly particularized.
44. Industries denies the allegations in paragraphs 89 to 119 and 138 to 143 of the Statement of Claim.
45. In specific answer to paragraphs 89 to 119 and 138 to 143, Industries denies that it:
 - a) conspired with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
 - b) acted in concert or with common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
 - c) was involved either as principal or as agent for any other defendant or any other person or entity with respect to the commission of any tobacco related wrong; or
 - d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the Act or otherwise pursuant to section 4 of the Act, or at all.
46. In the alternative and without advancing a positive case, if Industries has any liability to the plaintiff by reason of the matters pleaded at Section IV of the Statement of Claim (which is denied) then Industries claims the benefit of all and any defences of all and any defendants with whom Industries is alleged to be jointly and severally

liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, Industries is alleged to be jointly and severally liable.

A. Role of So-Called Lead Companies

47. Industries denies that it formed, joined, or was ever a member of any of the industry organizations identified in the Statement of Claim. More particularly, Industries was never a member of, never undertook any activities through, never participated in committee meetings of, and never entered into agreements as a part of, or with, the Tobacco Industry Research Committee (“TIRC”), the Council for Tobacco Research (“CTR”), the Tobacco Research Council (“TRC”), the Centre for Co-operation in Scientific Research Relative to Tobacco (“CORESTA”), the International Committee on Smoking Issues (“ICOSI”), the International Tobacco Information Centre/Centre International d’Information du Tabac (“INFOTAB”), the Tobacco Documentation Centre (“TDC”) or the Canadian Manufacturers’ Council (“CTMC”).

B. Alleged Conspiracy and Concert of Action in Canada

48. Industries specifically denies paragraph 111 of the Statement of Claim.

- a) Industries was not involved in the formation of the Ad Hoc Committee on Smoking and Health in or about 1963 (later renamed the CTMC). The CTMC was a Canadian organization whose members were from the Canadian industry. Industries has never been a member of the CTMC. Industries has never controlled how ITCAN voted either in committees of Canadian manufacturers or in meetings of the CTMC.
- b) Industries did not make representations in 1963 to the Canadian Medical Association.
- c) Industries did not make representations in 1969 to the Canadian federal House of Commons or the Standing Committee on Health, Welfare and Social Affairs.
- d) Industries specifically denies paragraphs 115 and 116 of the Statement of Claim. Member companies of the CTMC, which did not include Industries,

exclusively decided issues relating to smoking and health, in particular, the approval and funding of CTMC research.

C. Joint Liability

49. Industries specifically denies paragraph 138 of the Statement of Claim. The meetings, conferences, committees and communications referred to were not used as vehicles to direct or control the operations of ITCAN or the positions taken by the CTMC in Canada. Industries did not direct ITCAN to adopt policies or positions on smoking and health or addiction in Canada through meetings, committees, conferences and communications identified in the Statement of Claim or at all. ITCAN assessed its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day to day execution of those policies that best promoted the company's specific needs and judgments.
50. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to, among other subjects, the public statements it made and the positions it took relating to smoking and health issues.
51. Industries denies that it directed or controlled the activities of, or conspired or acted in concert or with common design with the defendant ITCAN, as alleged or at all. Industries had no involvement in the day to day management of ITCAN's operations or programmes, and Industries did not dominate or exert functional or legal control or undue influence over ITCAN with respect to smoking and health issues or at all.
52. Further, Industries denies that any alleged tobacco related wrongs in Canada (which are denied) are the proximate and direct result of the organizations, meetings, conferences, committees and communications identified in the Statement of Claim.
53. Further, the plaintiff has no claim in respect of the alleged conspiracy and concerted action because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in New Brunswick in furtherance thereof that the plaintiff alleges are unlawful.

54. Industries pleads the doctrines of *ex turpi causa non oritur action* and *in pari delicto ptior est conditio defendantis*.

RELIEF

(paragraph 144 of the Statement of Claim)

55. Industries denies the plaintiff has incurred the cost of health care benefits as alleged.

56. In further answer to paragraph 144 of the Statement of Claim, Industries repeats paragraphs 8 to 15 herein.

IV. THE PLAINTIFF'S OWN CONDUCT

A. General

57. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in New Brunswick. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), Industries states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge

58. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state-of-the-art of the day, regarding the health risks associated with smoking cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:

- a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in New Brunswick and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;
- b) has sought to benefit financially from the sale of cigarettes in New Brunswick, and has so benefited, by taking advantage of its ability to impose and to collect

heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of cigarettes and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking cigarettes and exposure to cigarette smoke;

- c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time; and
- d) has voluntarily undertaken the obligations of paying for the costs of health care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke and has set its taxation and health care policies accordingly.

59. Further, Industries states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.N.B. 2011, c.131 and the *Tortfeasors Act*, R.S.N.B. 2011, c.231.

60. Further, Industries states that the plaintiff is barred from recovering any damages or costs it has suffered (the existence of which is denied), as any damages or costs flowed from its own wrongful conduct.

61. Further, Industries states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to Industries, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against Industries. Industries also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged.

62. Further, Industries says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, the plaintiff has failed to mitigate those costs.

V. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

A. General

63. If the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.
64. At all material times, insured persons who smoke or have smoked cigarettes were aware, or should have been aware, of risks associated with smoking.
65. During all material times, insured persons became aware, or should have become aware, of risks associated with smoking by various means, including, without limitation, one or more of the following:
 - a) discussions and writing in all forms of media, including newspapers, magazines, journals, television, movies and radio;
 - b) education programmes, including courses, seminars and lectures and educational literature and other media;
 - c) oral and written warnings from physicians, other health practitioners, and public health authorities;
 - d) oral and written warnings from family members, friends and other acquaintances;
 - e) common general understandings and historical beliefs;
 - f) warnings on the packaging of cigarettes, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and
 - g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place.

66. By reason of the foregoing, Industries says that insured persons who smoke or have smoked cigarettes were aware, or should have been aware, of associated risks during all material times.
67. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and voluntarily consented to accept such risks.
68. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the associated risks. Industries had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.
69. Industries denies that any insured persons began, continued or were unable to cease smoking by reason of any of the alleged breaches of duty of Industries, or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person or the cost of health care benefits.
70. Further, Industries says that at all material times individual insured persons were aware of, or should have been aware of, health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence and continue smoking.
71. Further, Industries says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.N.B. 2011, c.131 and the *Tortfeasors Act*, R.S.N.B. 2011, C.231.
72. Further, Industries says that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Industries, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against Industries.

73. Further, Industries pleads and relies upon the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest.
74. Further, Industries says in further answer to the whole of the Statement of Claim, if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, individual insured persons have failed to mitigate that cost.

VI. RELIEF

75. Industries requests that the claim against it be dismissed with costs.
76. Industries intends to proceed in the English language.

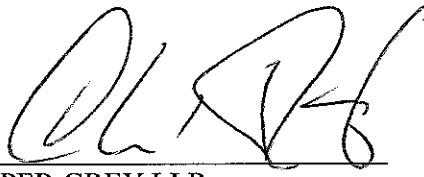
DATED at Fredericton, New Brunswick, this 20th day of August, 2012.



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IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK

COURT OF QUEEN'S BENCH
FREDERICTON, NB
RECEIVED AND FILED

AUG 20 2012

COUR DU BANC DE LA REINE
FREDERICTON, N.B.
RECEIVED AND FILED

PLAINTIFF

AND:

ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS ROTHMANS LIMITED,
ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC.,
.JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO
INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN
TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS)
LIMITED AND CANADIAN TOBACCO MANUFACTURERS' COUNCIL

DEFENDANTS

STATEMENT OF DEFENCE OF
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED

(Form 27A)

1. The Defendant, British American Tobacco (Investments) Limited ("Investments") denies all allegations contained in the Statement of Claim unless specifically admitted, to the same extent as if each were set forth and traversed seriatim, and further puts the plaintiff to the strict proof thereof.
2. Without limiting the generality of the foregoing, Investments specifically denies that it took part in any conspiracy, concerted action or common design as alleged or at all and specifically denies that it has owed or breached any common law, equitable or statutory duty or obligation to persons in New Brunswick as alleged in the Statement of Claim. Investments denies that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes, or to be exposed to cigarette smoke. Investments specifically denies that it acted in a manner that wrongfully caused any person in

New Brunswick to smoke or to continue smoking or the plaintiff to incur the costs of health care benefits resulting from tobacco related diseases or the risk thereof.

3. In the interests of clarity and convenience, Investments adopts the headings used in the Statement of Claim but it does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, Investments adopts on the same basis the definitions used in the Statement of Claim.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

4. Except as expressly admitted below, Investments denies the allegations contained in paragraphs 19, 40-43, 47-119 and 138-143 of the Statement of Claim, and further denies that the plaintiff is entitled to the relief sought in paragraphs 1, 2, 3 and 144 of the Statement of Claim.
5. Investments has no knowledge of the facts alleged in paragraphs 6-16, 18, 20-39, 44-46 and 120-137 of the Statement of Claim and puts the plaintiff to the strict proof thereof.
6. With respect to paragraphs 4 and 5 of the Statement of Claim, Investments repeats paragraph 3 above.

B. The Defendants

7. With respect to paragraph 17 of the Statement of Claim, Investments admits that it formerly was named British-American Tobacco Company Limited, and states that in this Statement of Defence the defined term "Investments" incorporates reference to the company's former name. Investments admits that it has a registered office at Globe House, 1 Water Street, London, England but states that it is incorporated pursuant to the laws of England and Wales.
8. With respect to paragraph 19 of the Statement of Claim, Investments denies that it is a "manufacturer" as alleged. Investments further denies that it has any predecessors in interest for whom it is legally responsible.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK

9. Investments does not carry on business in New Brunswick and has never manufactured, advertised, marketed, distributed, promoted or sold cigarettes in New Brunswick.
10. Investments denies the allegation that it directed or controlled smoking and health policies of affiliated companies, including the defendant Imperial Tobacco Canada Limited ("ITCAN"), and states that ITCAN and other companies identified at paragraph 47 developed their own

smoking and health policies pursuant to the business, legal and scientific judgments of their respective executives and not as a proximate result of any direction or instruction by executives or directors at Investments.

11. Investments is unable to determine what, if any, legal or other significance the plaintiff seeks to ascribe to the term "Lead Companies" as defined in paragraph 42 of the Statement of Claim. Without prejudice to this, Investments denies that it was such in relation to the companies identified at paragraph 47 of the Statement of Claim, and Investments specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.

III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS.

A. The Defendants' Knowledge

12. Investments has not designed, manufactured or promoted cigarettes in New Brunswick. Any design, manufacture or promotion of cigarettes in New Brunswick by another defendant cannot and does not constitute such activity by Investments. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support.
13. Investments admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of cigarette smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in cigarette smoke. Smoking is, for many people, difficult to quit and it can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during all material times that smoking is difficult to quit and that smoking poses serious health risks.
14. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.

15. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.
16. Epidemiological evidence cannot tell whether any individual became ill because of smoking or exposure to cigarette smoke.

B. Deceit and Misrepresentation

17. Investments repeats paragraph 9 above and denies that it owed a duty of care to residents of New Brunswick as alleged at paragraph 54 of the Statement of Claim or at all.
18. In any event Investments has not made oral or written statements or representations of any kind as to the risks of smoking or exposure to smoke or as to addiction or any other risk or benefit allegedly associated with smoking cigarettes or with cigarette smoke, either in New Brunswick or directed at residents of New Brunswick. Further, any statements or representations made by Investments on those issues made outside of New Brunswick were based on Investments' reasonably and genuinely held beliefs given the scientific state of the art. While the precise articulation of Investments' positions on those issues has changed over time, Investments has recognised that along with the pleasures of smoking come real risks of serious diseases such as lung cancer, respiratory disease and heart disease, and that for many people smoking is difficult to quit. Accordingly the allegations in paragraphs 55-59 of the Statement of Claim are denied.
19. Investments says further that at no time did it make any representations that were false or with wilful blindness, recklessness or negligence as to their truth or falsity.
20. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
21. By reason of the foregoing denials, Investments denies paragraph 60 of the Statement of Claim.

C. Failure to Warn

22. Investments repeats paragraph 9 above and denies that there are or were any cigarettes sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly Investments

denies and does not plead to the balance of paragraph 61 of the Statement of Claim as it has no application to Investments.

23. To the extent that paragraphs 62 to 67 of the Statement of Claim are founded upon conduct referable to "their" cigarettes, Investments repeats paragraph 22 and denies and does not plead to paragraphs 62 to 67 as they have no application to it. Alternatively, to the extent that paragraphs 62 to 67 allege that Investments was subject to and breached a duty of care to residents of New Brunswick in respect of cigarettes other than "their" cigarettes then Investments denies the existence and breach of such a duty.
24. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
25. By reason of the foregoing denials, Investments denies paragraph 68 of the Statement of Claim.

D. Promotion of Cigarettes to Children and Adolescents

26. Investments repeats paragraph 9 above and denies that it had a duty of care to children and adolescents in New Brunswick as alleged at paragraph 69 of the Statement of Claim or at all.
27. By reason of the foregoing denial, the knowledge alleged at paragraphs 70 to 72 of the Statement of Claim, insofar as it is alleged to be knowledge possessed by Investments, is irrelevant to any claim against Investments and is denied.
28. Investments repeats paragraph 26 above and denies paragraphs 74 and 75 of the Statement of Claim.
29. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
30. By reason of the foregoing denials, Investments denies paragraph 76 of the Statement of Claim.

E. Negligent Design and Manufacture

31. Investments repeats paragraphs 9 and 12 above and denies that it had a duty of care to residents of New Brunswick as alleged in paragraph 77 of the Statement of Claim or at all.
32. Investments did not direct or control the product development efforts of ITCAN with respect to the cigarettes ITCAN sold in New Brunswick. Nevertheless, the historical research efforts of

Investments, over many years and with increasing degrees of sophistication as science developed, supported the ability of affiliated companies, including ITCAN, to reduce drastically the overall tar and nicotine yields of their products by employing various cigarette design techniques, including filters, ventilation, increasingly porous paper, reconstituted tobacco and expanded tobacco. Investments devoted substantial resources to other safer cigarette research, which again supported the research and product development efforts of affiliated companies such as ITCAN, including efforts to reduce selectively certain constituents in tobacco or tobacco smoke and to develop novel products as alternatives to traditional combustible cigarettes. All of that safer cigarette work has occurred in an environment where, even today, leading public health authorities have acknowledged that there is no scientifically valid way to determine the relative safety of one cigarette versus another.

33. Actions taken or not taken by ITCAN in Canada relating to the manufacture and design of its cigarettes were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by executives or directors at Investments.
34. By reason of the foregoing denials, paragraphs 78 to 82 of the Statement of Claim are denied.
35. By reason of the foregoing denials, Investments denies paragraph 83 of the Statement of Claim.

F. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations

36. Investments repeats paragraph 9 and denies that there are or were any cigarettes sold in New Brunswick which can be regarded as "their" cigarettes, and accordingly Investments denies and does not plead to the balance of paragraph 84 of the Statement of Claim as it has no application to Investments.
37. To the extent that paragraphs 85 to 87 of the Statement of Claim are founded upon conduct referable to "their" cigarettes, Investments repeats paragraph 36 and does not plead to paragraphs 85 to 87 as they have no application to it. Alternatively, to the extent that paragraphs 85 to 87 allege that Investments was subject to and breached any duties to residents of New Brunswick in respect of cigarettes other than "their" cigarettes, then Investments denies the existence and breach of such duties.
38. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any direction or instruction by executives or directors at Investments.

39. By reason of the foregoing denials, Investments denies paragraph 88 of the Statement of Claim.

G. Exposure

40. Investments denies that any of the identified individual tobacco related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to cigarette smoke but says further in respect of such allegations:

- (a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that insured person for reasons specific to that person;
- (b) while Investments accepts that smoking is for many people difficult to quit and that it can be termed an "addiction" or dependency, Investments says that the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and
- (c) while Investments accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Investments says that at all material times insured persons have been aware of, or had information available to them which recognises, the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, Investments denies that insured persons relied on positions adopted by Investments as to the health risks associated with smoking and, alternatively, if they did so rely then it is denied that such reliance was reasonable.

H. Disease and the Risk of Disease

41. Investments says that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, cigarettes smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Investments had any duties or obligations in New Brunswick (which is denied), and if Investments breached any such duties or obligations (which is denied), no such breach caused or contributed to:

- (a) any tobacco related disease in any insured person; or
- (b) any increased risk of tobacco related disease in any insured person.

I. No Market Share

42. By reason of the facts and matters pleaded above, in particular at paragraph 9, Investments has never possessed any share of the market for cigarettes in New Brunswick whether as defined by the *Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006 c.T-7.5 ("Act") or at all. Accordingly, Investments can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then Investments can have no liability at all.

IV. CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN

43. In the following section, Investments pleads as fully as it currently is able to the allegations contained in paragraphs 89-119 and 138-143 of the Statement of Claim. Pending proper particularisation of the Statement of Claim, many of the allegations can be pled to in only the most general terms. Investments reserves the right to supplement this Statement of Defence once the Statement of Claim is properly particularised.

44. If, which is denied, Investments has any liability to the plaintiff by reason of the matters pleaded at Section IV of the Statement of Claim then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual defendant, if any, with whom Investments is found to be jointly and severally liable in respect of a tobacco related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, Investments claims the benefit of all and any defences of all and any defendants with whom Investments is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such defendant and, hence, Investments is alleged to be jointly and severally liable.

45. Without prejudice to the foregoing, in the generality in respect of paragraphs 89-119 and 138-143 of the Statement of Claim, Investments denies that it:

- (a) conspired with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
- (b) acted in concert or with common design with any other defendant with respect to the commission of any tobacco related wrong, whether directly or through the industry associations identified in the Statement of Claim; or
- (c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or

(d) acted so as to render it jointly or vicariously liable with any other defendant in respect of any tobacco related wrong, whether pursuant to section 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.

46. Further, Investments denies that it directed or controlled the activities of, or conspired or acted in concert or with common design with the defendant ITCAN, as alleged or at all. At all material times, to the extent that Investments held shares in ITCAN, Investments and ITCAN observed all corporate separateness formalities. In the normal course of business Investments and ITCAN legitimately and appropriately exchanged information relevant to ITCAN's operations in Canada. However, Investments had no involvement in the day-to-day management of ITCAN's operations or programmes, and Investments did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.

A. Role of the So-Called Lead Companies

47. Investments denies the allegation at paragraph 90 of Statement of Claim that, through an agent, it participated in the meetings or communications alleged.

48. Investments never was a member of the Tobacco Industry Research Council or the Council for Tobacco Research. They were American organizations formed and composed of members from the U.S. tobacco industry and have not existed as of 1998.

49. The Tobacco Research Council, originally known as the Tobacco Manufacturers' Standing Committee, was a U.K. organization, of which Investments was a founding member, which sponsored and conducted extensive published research relating to smoking and health.

50. The Centre for Cooperation and Scientific Research Relative to Tobacco is an international organization founded in 1956 for the study of science and technology related to tobacco products, and in particular the development of analytical and testing methodologies, including with the World Health Organization and International Organization for Standardization. Its reports in this regard have been and are publicly available. Membership is open to organizations with research and development activities related to tobacco. Investments did not become a member until 1972.

51. The International Committee on Smoking Issues was established in 1977 as a forum for the exchange of views and information on international tobacco issues (including smoking and health) between various unaffiliated tobacco companies. In December 1980, it became known as The International Tobacco Information Centre/Centre International d'Information du Tabac-INFOTAB. Investments announced its withdrawal from INFOTAB in 1987.

52. The Tobacco Documentation Centre was a separate body established in 1992 as a repository for published literature relevant to the tobacco industry.
53. None of those organizations, referred to in paragraphs 89 to 108 of the Statement of Claim, was under the direction or control of Investments and neither was any of those organizations ever used to direct or control the operations, policies or positions of ITCAN. None ever determined the direction of Investments' research into issues relating to smoking and health.

B. Alleged Conspiracy and Concerted Action in Canada

54. Investments specifically denies paragraph 111 of the Statement of Claim.
 - (a) Investments was not involved in the formation of the Ad Hoc Committee on Smoking and Health in or about 1963 (later renamed The Canadian Tobacco Manufacturers Council ("CTMC")). The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Investments has never been a member of the CTMC. Investments has never controlled how ITCAN voted in either committees of Canadian manufacturers or in meetings of the CTMC.
 - (b) Investments did not make representations in 1963 to the Canadian Medical Association.
 - (c) Investments did not make representations in 1969 to the Canadian federal House of Commons or to the Standing Committee on Health/Welfare and Social Affairs.
 - (d) Investments specifically denies paragraphs 115 and 116 of the Statement of Claim. Member companies of the CTMC, which did not include Investments, exclusively decided issues relating to smoking and health including, in particular, the approval and funding of CTMC research.

C. Joint Liability

55. Investments specifically denies paragraph 138 of the Statement of Claim. The conferences, committees, meetings and communications referred to were not used as vehicles to direct or control the operations of ITCAN or the positions taken by the CTMC in Canada. Investments did not direct ITCAN to adopt policies or positions on smoking and health or addiction in Canada through the meetings and structures identified in the Statement of Claim. Ultimately, it was up to ITCAN to assess its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day-to-day execution of those policies that best promoted the company-specific needs and judgments.

56. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to, among other subjects, the public statements it made and the positions it took relating to smoking and health issues.
57. Further, Investments denies that any alleged tobacco related wrongs in Canada (which are denied) are the proximate and direct result of the meetings and structures identified in the Statement of Claim.
58. Further, the plaintiff has no claim in respect of the alleged conspiracy or concerted action because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in New Brunswick in furtherance thereof that the plaintiff alleges are unlawful. Investments pleads the doctrine of *ex turpi causa non oritur action and in pari delicto potior est conditio defendantis*.

V. RELIEF

59. In answer to the entire Statement of Claim, Investments says that the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits for insured persons resulting from tobacco related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco related wrongs alleged. Further, and in particular:
 - (a) if Investments breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health care benefits as alleged or at all;
 - (b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits was caused by one or more of the following:
 - i. requirements of the statutes and regulations that were voluntarily enacted by the plaintiff and which provide for health care in New Brunswick, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in subparagraphs 1(a) to (d) of the definition of health care benefits in the *Act*;
 - ii. the conduct and acts or omissions of the plaintiff as further particularized herein;

- iii. the conduct and acts or omissions of individual insured persons as further particularized herein; and
- iv. disease or risk of disease in individual insured persons unrelated to smoking cigarettes or exposure to cigarette smoke.

(c) if the plaintiff has incurred or will incur the cost of health care benefits as alleged, which is denied, then the plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:

- i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;
- ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;
- iii. that cost is or will be exceeded by tax revenues received by the plaintiff from the sale of cigarettes in New Brunswick alleged to have been caused by the tobacco related wrongs alleged; and
- iv. that cost is not influenced by the tobacco related wrongs alleged.

VI. THE PLAINTIFF'S OWN CONDUCT

60. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in New Brunswick. Within that legal and regulatory framework, if the plaintiff has incurred or will incur the cost of health care benefits that have been or will be provided to insured persons who have suffered tobacco-related disease, as alleged (which is denied); Investments states that such costs were caused, and the plaintiff's claim to recover such costs is subject to complete defences, by reason of the plaintiff's own conduct and knowledge.

61. At material times and at least since 1950, the plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:

- (a) continued to licence and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in New Brunswick and insured persons have relied upon the plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;
- (b) has sought to benefit financially from the sale of cigarettes in New Brunswick, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of cigarettes and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking cigarettes and exposure to cigarette smoke;
- (c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes by people under the legal age for purchasing them as defined by law from time to time; and
- (d) has voluntarily undertaken the obligations of paying for the costs of health care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke, and has set its taxation and health care policies accordingly.

62. Further, Investments states that if the plaintiff has incurred the cost of health care benefits as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein, and not any act or omission of Investments. Investments pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.N.B. 2011, c.131 and the *Tortfeasors Act*, R.S.N.B. 2011, c.231.

63. Further, Investments states that the plaintiff is barred from recovering any damages or costs it has suffered (the existence of which is denied), as any damages or costs flowed from its own wrongful conduct.

64. Further, Investments states that by reason of the facts set out herein and the knowledge, conduct and delay of the plaintiff and the prejudice thereby caused to Investments, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of Claim against Investments. Investments also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged.

65. Further, Investments states that if the plaintiff has incurred the cost of health care benefits resulting from tobacco related disease or the risk of tobacco related disease as alleged (which is denied), the plaintiff has failed to mitigate such costs.

VII. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

66. If the plaintiff has incurred the cost of health care benefits as alleged (which is denied), the cost was caused by, and the plaintiff's claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.
67. Insured persons who smoke or have smoked cigarettes were aware of the risks associated with smoking during all material times.
68. Insured persons became aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:
 - (a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;
 - (b) education programmes including courses, seminars and lectures and educational literature and other media;
 - (c) oral and written warnings from physicians and other health practitioners and public health authorities;
 - (d) oral and written warnings from family members, friends and other acquaintances;
 - (e) common general understandings and historical beliefs;
 - (f) warnings on the packaging of cigarettes, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and
 - (g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place.
69. By reason of the foregoing, Investments states that insured persons who smoke or have smoked cigarettes were aware of, or should have been aware of, the associated risks at all material times.
70. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.
71. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes with awareness of the

associated risks. Investments had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.

72. Investments denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Investments (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco related disease or increased risk of tobacco related disease in any insured person or the cost of health care benefits.
73. Investments states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.
74. Further, Investments states that if the plaintiff has incurred the cost of health care benefits as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Investments. Investments pleads and relies upon the provisions of the *Contributory Negligence Act* and the *Tortfeasors Act*.
75. Further, Investments states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Investments, the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against Investments.
76. Investments pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco related wrongs alleged in respect of the claims of any individual insured person upon which the plaintiff's cause of action is alleged to rest.
77. Further and in the alternative, Investments states that, if the plaintiff has incurred the costs of health care benefits as alleged (which is denied), individual insured persons have failed to act reasonably to assist the plaintiff to mitigate that cost.
78. Investments requests that the claim against it be dismissed with costs.

79. Investments intends to proceed in the English language.

DATED at Fredericton, New Brunswick this 20 day of August, 2012.



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